

[COUNSEL LISTED IN SIGNATURE BLOCK]

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

STEVE ELLIS, *et al.*,

Plaintiffs,

v.

RICHARD P. KEIGWIN, JR. *et al.*,

Defendants,

and

BAYER CROPSCIENCE LP, *et al.*,

Defendant-Intervenors.

) Case No.: 3:13-cv-01266-MMC

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STIPULATION ON ATTORNEYS' FEES
AND COSTS AND ~~PROPOSED~~ ORDER

1 This Stipulated Agreement (hereinafter, “Stipulation”) is made between Plaintiffs Steve
2 Ellis, Tom Theobald, Jim Doan, Bill Rhodes, Center for Food Safety, Beyond Pesticides, Sierra
3 Club, and Center for Environmental Health (“Plaintiffs”) and Defendants Andrew Wheeler,
4 Administrator of the United States Environmental Protection Agency (“EPA”), and Richard P.
5 Keigwin, Jr., Director of the EPA Office of Pesticide Programs (“Defendants”), all of the
6 foregoing referred to collectively as the “Parties.”

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8 WHEREAS, Plaintiffs filed their original complaint on March 21, 2013, and their First
9 Amended Complaint on May 31, 2013, initially alleging 14 claims challenging various EPA
10 registrations and other actions involving clothianidin and thiamethoxam products under the
11 Administrative Procedure Act, Endangered Species Act, and Federal Insecticide, Fungicide and
12 Rodenticide Act.

13 WHEREAS, EPA and Defendant-Intervenors filed partial motions to dismiss in 2013,
14 Plaintiffs voluntarily dismissed a number of their claims with prejudice on October 25, 2013, the
15 Court granted in part and denied in part the motions to dismiss on April 18, 2014, and Plaintiffs
16 filed their Second Amended Complaint on May 9, 2014, alleging six claims.

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18 WHEREAS, the Court granted in part and denied in part the parties’ respective motions for
19 summary judgment on liability on May 8, 2017.

20 WHEREAS, the Parties, through their authorized representatives, without final
21 adjudication of the facts or law with respect to Plaintiffs’ claims, executed a Joint Stipulation on
22 February 28, 2019, resolving the action; and, on May 31, 2019, the Court issued an Order
23 approving the Parties’ stipulated notice of dismissal and retaining jurisdiction, *inter alia*, to
24 resolve any claims by Plaintiffs against the EPA Defendants for fees and costs.
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1 WHEREAS, the Parties, without any admission or final adjudication of the issues of fact
2 or law with respect to Plaintiffs' claim for attorneys' fees, costs, and expenses, have reached a
3 settlement that they consider to be a lawful resolution of this claim;

4 WHEREAS, the Parties agree that settlement of Plaintiffs' claim to an award of attorneys'
5 fees, costs, and other expenses in this manner is in the interest of the parties and is an appropriate
6 way to resolve the claim; and

7 WHEREAS, the Parties enter this Stipulation without any admission of fact or law.

8 NOW, THEREFORE, the Parties STIPULATE and move the Court to ORDER AS
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10 FOLLOWS:

11 1. Defendants agree to settle Plaintiffs' entire claim for an award of costs, attorneys'
12 fees, and any other expenses in the above-captioned litigation for a total of \$2,125,000.00 in full
13 and complete satisfaction of any and all claims, demands, rights, and causes of action pursuant to
14 the Endangered Species Act, 16 U.S.C. § 1540(g) and/or any other statutory or common law
15 theory, for all attorneys' fees, costs, and expenses incurred by Plaintiffs in this litigation through
16 and including the date of this Stipulation. Defendants agree to pay the entire amount by
17 Electronic Funds Transfer to an account to be specified by counsel for appropriate distribution on
18 behalf of Plaintiffs in this action. Plaintiffs will furnish counsel for Defendants with the
19 information necessary to effectuate this payment. Defendants will promptly submit the documents
20 and information necessary for processing the \$2,125,000.00 payment to the U.S. Department of
21 the Treasury's Judgment Fund Office. Plaintiffs shall provide confirmation of the receipt of the
22 payment to undersigned counsel for Defendants within twenty one (21) days of receipt of the
23 payment.

24 2. Plaintiffs agree to accept payment of \$2,125,000.00 in full satisfaction of any and all
25 claims for attorneys' fees and costs of litigation to which Plaintiffs may be entitled with respect to
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1 the above-captioned litigation, through and including the date of this Stipulation. Plaintiffs agree
2 that receipt of this payment from Defendants shall operate as a release of Plaintiffs' claims for
3 attorneys' fees and costs in this matter, through and including the effective date of this Stipulation.

4 3. The Parties agree that this Stipulation was negotiated in good faith and it constitutes
5 a settlement of claims that were vigorously contested, denied, and disputed by the parties.

6 4. The undersigned representatives of each party certify that they are fully authorized
7 by the party or parties they represent to execute this Stipulation.

8 5. By entering into this Stipulation, Defendants do not waive any right to contest fees
9 claimed by Plaintiffs, or their counsel, including the hourly rate, in any future litigation. Further,
10 this Stipulation as to attorneys' fees and costs has no precedential value and shall not be used as
11 evidence by any party in any other attorneys' fees litigation.

12 6. Nothing in this Stipulation shall be interpreted as, or shall constitute, a commitment
13 or requirement that Defendants are obligated to pay any funds exceeding those available, or take
14 any action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other
15 appropriations law.

16 7. Plaintiffs acknowledge that under 31 U.S.C. §§ 3711, 3716, 26 U.S.C. § 6402(d), 31
17 C.F.R. §§ 285.5, 901.3, and other authorities, the United States intends to offset against the
18 attorneys' fee award Plaintiffs' delinquent debts to the United States, if any. See Astrue v. Ratliff,
19 560 U.S. 586 (2010).

20 8. Accordingly, the Parties jointly and respectfully request the Court's approval of this
21 Stipulation and the Order below.

22 IT IS SO STIPULATED.
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Dated: December 23, 2019.

Respectfully Submitted,



GEORGE A. KIMBRELL*
AMY VAN SAUN*
Center for Food Safety
2009 NE Alberta St., Suite 207
Portland, OR 97211
T: 971-271-7372
Email: gkimbrell@centerforfoodsafety.org
avansaun@centerforfoodsafety.org

Counsel for Plaintiffs

* Admitted *Pro Hac Vice*

JEAN E. WILLIAMS
Deputy Assistant Attorney General
Environment & Natural Resources Division
United States Department of Justice

/s/ John H. Martin
JOHN H. MARTIN (CO Bar No. 32667)
Wildlife & Marine Resources Section
999 18th Street, South Terrace, Suite 370
Denver, CO 80202
Telephone (303) 844-1383
Email: John.H.Martin@usdoj.gov


LESLIE M. HILL (DC Bar No. 476008)
Environmental Defense Section
601 D Street N.W., Suite 8000
Washington D.C. 20004
Telephone (202) 514-0375
Facsimile (202) 514 8865
Email: Leslie.Hill@usdoj.gov

Counsel for Defendants

~~PROPOSED~~ ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED this 30th day of December, 2019.


MAXINE M. CHESNEY
United States District Judge